

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14066, of Charles O. Riley, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3104.3) to use the subject premises as a repair garage in an R-4 District at premises 39 U Street, N.W., (Square 3117, Lot 14).

HEARING DATES: November 16, 1983 and January 18, 1984

DECISION DATE: February 1, 1984

FINDINGS OF FACT:

1. The subject application appeared on the preliminary calendar for the public hearing of November 16, 1984. The applicant had failed to file an affidavit that he had posted notice of the public hearing on the property. Subsequently, it was disclosed that the subject property had never been posted. The hearing was continued until the public hearing of January 18, 1984, since the applicant had failed to comply with the Supplemental Rules of Practice and Procedure before the BZA as to notice to the public.

2. The subject site is located on the north side of U Street, N.W., between North Capitol Street on the east and 1st Street on the west. The site is in an R-4 District and is known as premises rear 39 U Street, N.W.

3. The subject site is rectangular in shape. Its dimensions are seventeen feet on the north and south sides and 100 feet on the east and west sides. Its area is 1,700 square feet.

4. The site is improved with a single-family row dwelling at the south or front of the lot. At the north or rear of the lot is a garage facing onto a public alley.

5. There is access to and from the subject site through U Street on the south and through the public alley on the north. The public alley has a width of twenty feet. It is part of a rectangular alley system that creates an oversized interior lot.

6. The subject square and the surrounding neighborhood are developed primarily with medium density residential uses. The four outer edges of the subject square are

developed with row dwellings. The oversized lot at the center of the square is developed with an old C and P Telephone Company Building. The telephone building has a heavy industrial or commercial appearance and design. After the departure of the Telephone Company, the building was briefly used as a museum.

7. The subject square and the area surrounding it are zoned R-4 on all sides of the subject site. The nearest commercial districts are a C-2-A District at the intersection of 1st Street and Rhode Island Avenue, N.W. which is one block south of the site and a C-2-A strip along Florida Avenue, N.W. which is five blocks south of the site.

8. The subject property is a rental property. The dwelling at the front of the subject lot is rented to a residential tenant. The garage at the rear of the lot is rented separately as a commercial repair garage to the applicant's tenant.

9. In approximately 1978, the subject garage was leased to Mr. Amos Ofair who operated an automobile repair business in the premises. Mr. Ofair selected the subject garage as the site of his business because it had previously been used as a repair garage by another operator. Mr. Ofair continued that established use.

10. At the time that Mr. Ofair occupied the subject garage, he was not aware that a certificate of occupancy was needed. There was no certificate of occupancy posted in the garage when he took over the operation. Because the use was already established, the present operator assumed that the use was legal.

11. Mr. Ofair has been in the automobile repair business ever since he injured his back ten years. After the back injury, he was unable to do other work. Although experienced, Mr. Ofair is not a licensed mechanic.

12. The garage operator, Mr. Ofair, proposes to continue the use of the subject garage for automobile repairs. In order to obtain a certificate of occupancy for the commercial repair garage use, the operator must first obtain a use variance from the BZA.

13. The garage operator first became aware of the need for BZA approval of the subject use when an inspector from the D.C. Government came to the premises and asked to see a certificate of occupancy for the repair garage. Upon discovering that the operator did not have a certificate of occupancy, the inspector gave the operator information on how to apply to the BZA for approval.

14. The Board of Zoning Adjustment has the power to grant a use variance pursuant to Paragraph 8207.11 of the Zoning Regulations. The granting of a use variance requires that there be an undue hardship upon the owner arising from a unique or exceptional condition of the property which precludes the property from being used for the purpose for which it is zoned. The granting of the use variance must also not cause a substantial detriment to the public good nor impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and maps.

15. The garage operator argued that the work conducted in the subject repair garage was minor and consisted primarily of brake repairs. Mr. Ofair repairs his own car at the garage and uses the same tools to repair customers' cars.

16. The garage operator further argued that the rear of the property and the interior of the square is commercial in nature and is considered in the neighborhood to be a "commercial zone." The old Telephone Company site which is directly across the alley from the subject site creates a commercial environment at the interior of the square. The garage operator was of the opinion that the rear of the subject property and the telephone company site which adjoins it across the alley were both zoned for commercial use. The Zoning Map indicates such is not the case, as set forth in Finding No. 7.

17. There was no additional information that the operator could share with the Board that would address Sub-section 3104.3 of the Zoning Regulations. The area had simply appeared to be commercial although it is in an R-4 District. The use had appeared to be established and the operator had not realized that it was illegal.

18. The Board finds that although the subject repair garage may have limited work or limited business, it is located in a residential zone. A repair garage is first permitted in a C-2-A District and not in a residential district. It is the garage operator's responsibility to locate a site in a commercial district and to obtain a valid certificate of occupancy for the use.

19. One neighbor testified in opposition to the subject application. The opponent owns a dwelling unit that adjoins the subject unit. The opponent rents this property to a residential tenant and has received complaints from the tenant about smoke and activity at the subject garage. The opponent objected to a potential danger to surrounding properties from a heating fire that burns in the subject garage. Her other objections included the incompatibility of a commercial garage use in a residential district, parked cars blocking the alley outside the subject garage, and the loss of property value for surrounding properties due to a

nuisance caused by garage traffic. The Board concurs with the opposition.

20. Advisory Neighborhood Commission 5C filed no report on the subject application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot be used for the purposes for which it is zoned. The Board must further find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and maps.


The Board concludes that the applicant has not met this burden of proof in showing an undue hardship inherent in the property. There is nothing in the size, shape or topography of the subject property that presents it from being used for its intended R-4 residential purposes. The property is now being so used. The existing garage structure is an accessory use for the main residential structure. It could be used as a private garage for the dwelling on the subject lot. The location of the subject repair garage fronting on an existing commercial type telephone building in the interior of the square does not alter the zoning. This is not a hardship in the sense defined by the Zoning Regulations. The location of the subject garage at the rear of the subject lot does not exclude it from the residential district. The lack of residential character or appearance in the interior of the square does not justify a use variance. To the contrary, granting this use variance would intensify the problem of non-residential character at the interior of the square.

The Board concludes that granting this use variance to operate a commercial repair garage in an R-4 District cannot be done without substantial detriment to the public good and substantial impairment to the intent and purposes of the zone plan. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 3-0 (Maybelle T. Bennett, Douglas J. Patton and Carrie L. Thornhill to deny; William F. McIntosh and Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

JUN 14 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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